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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA
12 TUCSON DIVISION
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14

15 WILDEARTH GUARDIANS,

16 Plaintiff,

17 vs.

18 UNITED STATES FISH AND WILDLIFE
19 SERVICE and UNITED STATES FOREST
20 SERVICE,

21 Defendants.
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No. 13-151-RCC

**PLAINTIFF'S OPPOSITION TO
THE MOTION OF NEW MEXICO
FOREST INDUSTRY ASSOC.
TO APPEAR AS AMICUS**

1 Plaintiff WildEarth Guardians (“Guardians”) hereby submits this memorandum in
2 opposition to the motion of the New Mexico Forest Industry Association (“NMFIA”) to
3 appear as *amicus* in this case, and to file an *amicus* brief on the eve of this Court’s
4 hearing on the Federal Defendants’ Rule 59 motion.

5 Guardians opposes NMFIA’s motion for the following reasons:

6 1. This case has been pending since 2013, and NMFIA has not sought to
7 participate in the litigation of this matter until this time.

8 2. Even accounting for NMFIA’s representation – if true – that it did not learn
9 of this litigation until after the Court’s September 12, 2019 decision, NMFIA’s motion is
10 still untimely. On October 4, 2019, NMFIA’s President wrote a notarized letter that the
11 Federal Defendants have attached to the Malcolm Declaration in support of their Rule 59
12 motion. ECF Doc. No. 104-2 at 72-73. Since October 4, 2019 – and presumably earlier –
13 NMFIA has been working with the U.S. Forest Service to achieve this Court’s reversal of
14 its September 12, 2019 decision and/or to narrow the scope of the injunction. It was not
15 until the eve of tomorrow morning’s hearing on the Rule 59 motion that NMFIA sought
16 to participate in this case, and its failure to seek amicus status at an earlier time is not
17 reasonable.

18 3. The amicus brief that NMFIA seeks to file would not be helpful to the
19 Court’s resolution of the Federal Defendants’ Rule 59 motion – and would be merely
20 extraneous – for three reasons.

21 A. First, the draft brief contains significant argument as to equitable
22 factors that are not relevant to this Court’s resolution of the Rule 59 motion. Besides,
23 these irrelevant issues have already been raised by the Federal Defendants themselves and
24 allowing NMFIA to participate as amicus would simply permit the piling of irrelevancies
25 upon already stated irrelevancies.

26 B. Apart from the equitable issues, NMFIA desires to raise merits
27 arguments that the Federal Defendants have already made. There is simply no reason to
28 permit NMFIA to file a brief that parrots arguments that are already before the Court.

1 C. To the extent that the proposed amicus brief raises new arguments
2 not already raised by the Federal Defendants – which Guardians submits is not the case –
3 those arguments have yet to be adopted by the Federal Defendants and, therefore, cannot
4 be considered by this Court. *Russian River Watershed Protection Committee v. City of*
5 *Santa Rosa*, 142 F.3d 1136, 1141 n. 1 (9th Cir. 1998).

6 4. Permitting NMFIA to file an amicus brief at this late date would be
7 prejudicial to Guardians as it will not have an opportunity to file a memorandum to
8 respond to the arguments in the amicus brief in advance of the hearing on the Federal
9 Defendants’ Rule 59 motion.

10 For the foregoing reasons, Guardians respectfully submits that NMFIA’s motion
11 should be denied.

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13 Dated: November 6, 2019.

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15 Respectfully submitted,

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23 **CERTIFICATE OF SERVICE**

24 I hereby certify that a true and correct copy of this Plaintiff’s Opposition to Motion
25 to Appear as Amicus was served on counsel of record on November 6, 2019 through the
26 Court’s electronic CM-ECF system.

27 /s/ Steven Sugarman
28 Steven Sugarman